



# CONCORD POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURE

### USE OF FORCE

**GENERAL ORDER:** 05.04

**CALEA STANDARD:** 1.3.1-13

**ISSUE DATE:** May 18, 2004

**ACTION:** Amends revision dated September 15, 2015

**EFFECTIVE DATE:** December 21, 2015

#### **05.04.0**      **PURPOSE**

The purpose of this General Order is to provide instructions for the proper use of force by officers, provide a fair and impartial review of use of force incidents, determine whether the actions of officers were justified, and to maintain public confidence in the Concord Police Department.

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every officer of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### **05.04.1**      **POLICY**

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Concord Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

#### **05.04.2**      **DEFINITIONS**

##### **A. DEADLY FORCE**

Force that creates a substantial risk of causing death or serious physical injury.

##### **B. LESS LETHAL FORCE**

Force other than that which is considered deadly force. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

**C. OBJECTIVELY REASONABLE**

A threshold for determining the necessity for force and the appropriate level of force. Objective reasonableness is judged from the perspective of a reasonable officer facing similar circumstances. Such determination shall be made based upon the totality of facts known to the officer at the time force was applied, along with the officer's prior training and experience, without regard to the underlying intent or motivation of the officer. Factors include but are not limited to: the seriousness of the crime, level of threat or resistance presented to the officer, and the danger to the community.

**D. OFFICER**

For purposes of this general order, the term "officer" includes sworn law enforcement personnel of any rank who uses force in the performance of their duties.

**05.04.3      OBJECTIVE REASONABLENESS**

The use of force by an officer must be objectively reasonable. Officers shall use only the force necessary to effectively maintain control of a situation and protect the safety of the officer or other persons.

**05.04.4      USE OF DEADLY FORCE AND RESTRICTIONS**

A. Officers are authorized to use deadly force in the following circumstances:

1. An officer may use deadly force when it is or appears reasonably necessary to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
2. An officer may use deadly force when it is or appears reasonably necessary to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- a. The individual has a deadly weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the officer or another.

- b. The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.
- c. It is necessary to effect an arrest or to prevent the escape from custody of a person who he/she reasonably believes is attempting to escape by means of a deadly weapon, or who by the individual's conduct or any other means indicates that he/she presents an imminent threat of death or serious physical injury to others unless apprehended without delay (N.C.G.S. 15A-401(d)(2)).

**NOTE: Use of a deadly weapon or deadly force to resist arrest (N.C.G.S. 15A-401(f)):**

- **A person is not justified in using a deadly weapon or deadly force to resist an arrest by an officer using reasonable force, when the person knows or has reason to know that the officer is a law-enforcement officer and that the officer is effecting or attempting to effect an arrest.**
- **The fact that an arrest may not be authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.**

**Neither of the two items above shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest N.C.G.S. 15A-401(f)(2).**

- 3. To kill an animal if the officer or another person is threatened with serious bodily harm by the animal or otherwise to provide for the safety of the general public.
- 4. To kill an animal that has been so badly injured that its destruction would prevent further suffering.
- B. Police officers may draw or display their firearms in circumstances where they reasonably believe it may be necessary to use their firearm in the performance of their duties. Doing so is not considered, by itself, to be a use of force.
- C. The firing of warning shots is prohibited. When practicable prior to the discharge of a firearm at a person, officers should identify themselves as law enforcement officers and verbalize their intent to use deadly force.

**05.04.5 USE OF LESS LETHAL FORCE AND RESTRICTIONS**

- A. Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the type and amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are trained and entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### **05.04.6** **FACTORS USED TO DETERMINE REASONABLENESS**

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- a) Immediacy and severity of the threat to officers or others.
- b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- c) Officer/subject factors (i.e., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. number of subjects).
- d) The effects of drugs or alcohol.
- e) Individual's mental state or capacity.
- f) Proximity of weapons or dangerous improvised devices.
- g) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- h) The availability of other options and their possible effectiveness.
- i) Seriousness of the suspected offense or reason for contact with the individual.
- j) Training and experience of the officer.

- k) Potential for injury to officers, suspects and others.
- l) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- m) The risk and reasonably foreseeable consequences of escape.
- n) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- p) Prior contacts with the individual or awareness of any propensity for violence.
- q) Any other exigent circumstances.

#### **05.04.7 DUTY TO INTERVENE**

Any officer who personally observes another officer using force, which the observing officer believes to be beyond that which is objectively reasonable under the circumstances, shall reasonably attempt to intervene to prevent the use of such excessive force, if the observing officer is in a position to do so, and if any such intervention does not jeopardize safety. The intervening officer shall promptly report their observations, along with his/her own actions to a supervisor.

#### **05.04.8 SHOOTING AT OR FROM MOVING VEHICLES**

- A. Discharging a firearm at or from a moving vehicle shall only be done in the following circumstances and only when all other reasonable alternatives have been exhausted or deemed unacceptable.
  - 1. An officer shall not discharge a firearm at the driver or occupant(s) of a moving vehicle, or the vehicle itself, unless deadly physical force is being used against the officer or another person by means other than a moving vehicle, or, the moving vehicle poses an imminent and ongoing threat of substantial physical harm to the officer or another person from which there is no reasonable means to escape, and the risks are outweighed by the need to use deadly physical force. Once the threat of the moving vehicle ceases, an officer shall not discharge his or her firearm at the vehicle.
  - 2. Officers shall not intentionally place themselves to either the front or the rear of a moving vehicle's path. If they find themselves in danger from a moving vehicle, they shall attempt to move out of the way, if possible, rather than discharge their firearm. Firing at a moving vehicle will not, in most circumstances, stop the vehicle. Further, should the driver be wounded or killed, the vehicle may still continue in motion.

3. An officer shall not discharge a firearm from a moving vehicle unless deadly physical force is being used against the officer or another person by means other than a moving vehicle (e.g., fired upon), and the risks are outweighed by the need to use deadly force.
4. Officers should avoid reaching into or placing any part of their bodies inside a driver occupied vehicle during a traffic stop or field interview. To do so may place the officer in a position of disadvantage.

#### **05.04.9     REPORTING USE OF FORCE INCIDENTS**

##### **A.     PURPOSE**

The *Use of Force Report* is designed to document those incidents involving the use of force by officers as described herein. The report shall be completed by a supervisory officer of a higher rank than the officer that used force. In unique circumstances the Chief of Police may assign a subordinate supervisor to file a use of force report (i.e., a major, deputy chief, or chief of police uses force that is reportable pursuant to this policy).

##### **B.     WHEN TO FILE REPORT**

1. The *Use of Force Report* shall be completed by a supervisory officer when:
  - a) An officer intentionally or unintentionally discharges a firearm in a non-training environment. Hunting, target practice, and sanctioned competitions do not require a use of force report.
  - b) An officer uses a baton in the line of duty (against a person or animal).
  - c) An officer discharges an irritant, chemical, or inflammatory agent.
  - d) An officer deploys an electronic control device, to include non-contact spark display, contact stun and probe deployment. However, non-contact spark display used as a test of functionality does not require the filing of a use of force report.
  - e) A department canine bites a person.
  - f) A forcible blood draw occurs requiring force to obtain a sample and where a subject claims injury or is injured as a result of police action.
  - g) An officer uses bodily force that involves focused strikes, diffused strikes, or decentralizations to the ground.
  - h) An officer uses any type of force in which a person is injured or claims injury, whether or not the injury is immediately visible.

**Note: When in doubt as to whether a use of force incident should be documented on a *Use of Force Report*, notify a supervisor for guidance and direction.**

**Following the use of lethal or less lethal weapons, or other applications of force by officers, timely medical aid shall be provided. This may include detecting obvious change in condition or behavior, clearing chemical agents from the eyes, providing first aid, evaluation by paramedics or immediate aid by medical professionals.**

C. REPORTING PROCEDURES

1. Officers using force as outlined above shall notify a supervisor as soon as practicable so that an administrative investigation can be conducted.
2. The investigating supervisor shall obtain a detailed verbal statement from the officer(s) who used force. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
3. The investigating supervisor shall obtain a detailed verbal statement from any officer or citizen who witnessed the use of force, including the person against whom force was used. Each statement should be obtained separately from any other statement. A citizen or suspect's refusal to provide a statement shall be noted in the report.
4. Photographs must be taken of the subject against whom force was used to illustrate any injury or lack thereof.
5. The investigating supervisor should complete the use of force report prior to the end of their shift, and in no case more than 72 hours after being notified of the use of force.
6. The investigating supervisor should limit his/her summary of the incident to the facts they were presented with and any evidence (i.e., body camera video) obtained during the course of the investigation. A determination of whether the use of force was proper, lawful, or in compliance with policy will be made by a major, deputy chief, or chief of police.
7. The completed use of force report shall be tracked in RMS using the applicable chain of command. The reviewing supervisor shall **recommend** a disposition and may add comments in RMS. The reviewing bureau commander shall enter a **disposition** and close the report if a determination is made that the use of force was justified and in compliance with policy.
8. Uses of force that are determined to be outside of policy, involve serious bodily injury or death, or involve the discharge of a firearm shall be tracked by the bureau commander to the chief of police for review and final disposition.

**05.04.10 USE OF FORCE COMMITTEE**

- A. A Use of Force Committee shall conduct periodic comprehensive reviews of all use of force issues affecting the department.
- B. The chief of police shall appoint members to the Use of Force Committee, who shall serve a one-year term, subject to extension at the discretion of the chief of police.
- C. The Use of Force Committee shall meet quarterly, or as otherwise directed by the chief of police, and shall focus on, but not be limited to, the following:
  - Appropriateness of use of force by department members.
  - Proper field supervision and supervisory review of use of force incidents.
  - Application and effectiveness of department policies and procedures concerning the use of force.
  - Proper use and effectiveness of equipment.
  - Effectiveness of use of force training.
  - Identification of training needs and opportunities for officers.
- D. The Use of Force Committee shall prepare a written report of the committee's findings and/or recommendations, and submit such report to the chief of police.

GARY J. GACEK  
CHIEF OF POLICE

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